No. 82-194

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In the Supreme Court of the United States

OCTOBER TERM, 1981

INTERNATIONAL RECTIFIER CORPORATION,

Petitioner,

v.

PETER R. COHEN, individually, and DEBORAH D. RIORDAN, as the Administratrix of the Estate of Edward Joseph Riordan, Deceased,

Respondents.

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioner International Rectifier Corporation (Rectifier) replies as follows to the brief in opposition to its petition for a writ of certiorari.*

* As to respondents' assertion that Rectifier failed to comply with Supreme Court Rule 28.1 (Resp. Br. at 1 n.1), Rectifier states that it has no parent company and all of its subsidiaries are wholly owned. Rectifier has a minority shareholders' interest in two foreign companies, International Rectifier Corporation (Japan) Ltd. and Ruttonsha-International Rectifier Private, Ltd., India.

I.

This Court's decisions establish that certiorari is appropriate notwithstanding the interlocutory nature of the decree from which Rectifier has appealed because Rectifier has raised an important issue of law that is fundamental to the further conduct of this case, *i.e.*, lack of subject matter jurisdiction. R. Stern & E. Gressman, *Supreme Court Practice* § 4.19 at 300-02 (5th ed. 1978), and cases cited therein. Thus, in *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 52 (1938), this Court, reversing a preliminary injunction with directions to dismiss the case, stated:

> The Circuit Court of Appeals should have reversed the decrees for a preliminary injunction. It is true that ordinarily the decree of a District Court granting or denying a preliminary injunction will not be disturbed on appeal. But that rule of practice has no application where, as here, there was an insuperable objection to the maintenance of the suit in point of jurisdiction and where it clearly appears that the decree was the result of an improvident exercise of judicial discretion.

II.

Even if the "side letter" dated August 12, 1975, referred to by respondents, could somehow be interpreted as evidencing the intent of the parties to attempt to reserve jurisdiction in the district court over fee disputes, that could be of no consequence whatsoever because "no action of the parties can confer subject matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant. . . ." *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 102 S.Ct. 2099, 2104 (1982).

III.

Neither the private attorney general policy underlying Section 4 of the Clayton Act, 15 U.S.C. § 15, nor this Court's decision in *Sprague* v. *Ticonic National Bank*, 307 U.S. 161 (1939), is implicated here because this case does not involve a court-awarded fee, but rather it involves a pure question of state law concerning the interpretation of a private contract.

IV.

Respondents' claim that there is no conflict is anomalous since, according to both respondents' arguments below and the district court's opinion, the cases relied upon by Rectifier represent the "minority view" on the issue of federal jurisdiction over fee contract disputes. App. 33. Moreover, the Eighth Circuit's refusal to decide the jurisdiction issue of itself presents a question of importance.

Respectfully submitted,

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